

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF DELAWARE**

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IN RE MBNA CORPORATION :  
DERIVATIVE AND CLASS : Lead Case No. 1:05-cv-00327-  
LITIGATION : GMS  
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This Document Relates To: :  
ALL ACTIONS. : CLASS AND DERIVATIVE  
: ACTION  
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**THE MBNA OUTSIDE DIRECTOR DEFENDANTS' MOTION FOR LEAVE  
TO FILE A RESPONSE TO PLAINTIFFS' SUR-REPLY MEMORANDUM RELATING  
TO THE ISSUE OF SUBJECT MATTER JURISDICTION**

WHEREAS, on November 20, 2005, Plaintiffs in the above-titled action filed a Consolidated Amended Shareholders' Class and Derivative Complaint (D.I. 31);

WHEREAS, the stated basis for jurisdiction in the Consolidated Amended Complaint is federal question jurisdiction (as to one count for federal securities law contribution against some defendants), and supplemental jurisdiction (as to the remaining ten counts, all of which raise Maryland state law fiduciary duty claims against all defendants in connection with the merger between MBNA Corporation and Bank of America Corporation (the "BAC Merger"));

WHEREAS, on January 20, 2006, Defendants James H. Berick, Mary M. Boies, Benjamin R. Civiletti, William L. Jews, Stuart L. Markowitz, William B. Milstead, Thomas G. Murdough and Laura S. Unger (collectively, the "Outside Directors") filed a motion to dismiss the Consolidated Amended Shareholders' Class and Derivative Complaint (D.I. 42);

WHEREAS, on March 6, 2006, Plaintiffs filed their answering brief to the motion to dismiss, which revealed for the first time that Plaintiffs' ten state law fiduciary duty claims substantially predominate over the lone federal claim for contribution (D.I. 47);

WHEREAS, on April 5, 2006, the Outside Directors filed their reply brief in support of the motion to dismiss, which included a subject matter jurisdiction defense (D.I. 49);

WHEREAS, on April 21, 2006, Plaintiffs sought leave to file a sur-reply brief to address the issue of this Court's jurisdiction over the subject matter of the case (D.I. 55);

WHEREAS, on November 27, 2006, the Court granted Plaintiffs' motion for leave to file a sur-reply brief (D.I. 59);

WHEREAS, on December 11, 2006, Plaintiffs filed their Sur-Reply Memorandum Relating to the Issue of Subject Matter Jurisdiction (D.I. 60);

WHEREAS, subject to the Court's preference, the Outside Directors would like to have the opportunity to respond to the arguments raised by Plaintiffs in their Sur-Reply Memorandum;

Accordingly, the Outside Directors respectfully request the Court's permission to submit a five-page response to Plaintiffs' Sur-Reply Memorandum, which the Outside Directors are prepared to file within 24 hours of the Court's decision on this motion, should the Court grant their request to file a response.

Respectfully,

/s/ Edward P. Welch

Edward P. Welch (I.D. # 671)

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